In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1644

SOLOMON STEINER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court (Pet. App. 15A-18A) is reported at 55 T.C. 1018. The judgment of the Court of Appeals (Pet. App. 20A) was entered without an opinion.

JURISDICTION

The judgment of the Court of Appeals was entered on March 29, 1972 (Pet. App. 20A-21A). A peti-

tion for a writ of certiorari was filed on June 19, 1972. Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the courts below correctly held that the petitioner was required to pay the tax imposed on self-employment income by Section 1401 of the Internal Revenue Code of 1954, or whether he was exempt from this tax by virtue of his status as a fully insured individual under Section 214 of the Social Security Act, as amended (42 U.S.C. 414).

STATUTES INVOLVED

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 1401 [as amended by Sec. 321(a), Social Security Amendments of 1965, P.L. 89-97, 79 Stat. 342, 394]. RATE OF TAX.

(a) *Old-Age, Survivors, and Disability Insurance.*—In addition to other taxes, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax as follows:

(1) in the case of any taxable year beginning after December 31, 1965, and before January 1, 1967, the tax shall be equal to 5.8 percent of the amount of the self-employment income for such taxable year;

* * * *

(b) *Hospital Insurance.*—In addition to the tax imposed by the preceding subsection, there shall be imposed for each taxable year, on the

self-employment income of every individual, a tax as follows:

(1) in the case of any taxable year beginning after December 31, 1965, and before January 1, 1967, the tax shall be equal to 0.35 percent of the amount of the self-employment income for such taxable year;

* * * *

Social Security Act, c. 531, 49 Stat. 620:

Sec. 214 [as added by Sec. 104(a), Social Security Amendments of 1950, c. 809, 64 Stat. 492, 505, and amended by Sec. 103(a), Social Security Amendments of 1961, P.L. 87-64, 75 Stat. 131, 137]. For the purposes of this title—

Fully Insured Individual

(a) The term "fully insured individual" means any individual who had not less than—

(1) one quarter of coverage (whenever acquired) for each calendar year elapsing after 1950 (or, if later, the year in which he attained age 21) and before—

(A) in the case of a woman, the year in which she died or (if earlier) the year in which she attained age 62,

(B) in the case of a man who has died, the year in which he died or (if earlier) the year in which he attained age 65, or

(C) in the case of a man who has not died, the year in which he attained (or would attain) age 65,

except that in no case shall an individual be a fully insured individual unless he has at least 6 quarters of coverage; or

(2) 40 quarters of coverage; or

(3) in the case of an individual who died before 1951, 6 quarters of coverage;

not counting as an elapsed year for purposes of paragraph (1) any year any part of which was included in a period of disability (as defined in section 216(i)).

* * * *

[42 U.S.C. 414.]

STATEMENT

During 1966, petitioner was a self-employed accountant. It is undisputed (Pet. 7A-14A) that in 1966 petitioner had a net profit from his business activity as an accountant of $5,507, and that his profit was self-employment income as defined in Section 1402(a) and (b) and as used in Section 1401(a) and (b) of the 1954 Code. Prior to 1966, petitioner, who was born in 1906, had computed and paid the self-employment tax imposed by Section 1401 for more than 40 consecutive quarters, thus achieving the status of a "fully insured individual" as defined in Section 214 of the Social Security Act. In his return for 1966, petitioner did not compute or pay the self-employment tax imposed by Section 1401. The Commissioner computed the tax due on petitioner's self-employment income and determined a deficiency of $338.68. The Tax Court sustained the Commission-

er's determination, and the petitioner appealed. On appeal, the District of Columbia Circuit Court of Appeals affirmed the decision of the Tax Court.

ARGUMENT

The decision below is correct. There is no conflict, as petitioner concedes (Pet. 3), nor any other reason for further review.

1. Section 202(a) of the Social Security Act, c. 531, 49 Stat. 620, 623 (42 U.S.C. 402), provides in substance that every individual who is a "fully insured individual" and has attained the age of 62 shall be entitled to maximum old-age benefits. Section 214 (a) (42 U.S.C. 414) defines a "fully insured individual" as any living individual who has not less than "40 quarters of coverage." Section 213(a) (42 U.S.C. 413) defines a "quarter of coverage" as a period of three months ending on March 31, June 30, September 30, or December 31, during which an individual has been paid a specified amount of wages or has been credited with a specified amount of self-employment income. Once having qualified as fully insured, an individual is eligible for certain disability and hospital insurance benefits. See Section 223 (42 U.S.C. 423) and Sections 1811-1814 (42 U.S.C. 1395 (c)-(f)). These insurance benefits are funded in large part by taxes on wages and on self-employment income and taxes on employers. See Sections 3101 (a) and (b), 3111 and 1401(a) (26 U.S.C.). Although the taxes are deposited in a trust fund from which the insurance benefits are paid, the trust funds

are not solely dependent upon these taxes for their funding. See Sections 201 and 1817 (42 U.S.C. 401, 1395(i)).

In this case petitioner contends that once he qualified as a "fully insured individual" under Section 214(a) of the Social Security Act, his self-employment income was thereafter exempt from the taxes imposed by Section 1401(a) and (b) of the Internal Revenue Code of 1954. There is no statutory basis for this contention. Section 1401 imposes tax for *each* taxable year on the self-employment income of *every* individual. Although Section 1402 of the Code provides certain specific exemptions, no such exemption is provided for "fully insured" individuals. The generalized legal history quoted by the petitioner (Pet. 3-5) does not confer an exemption where Congress did not choose to confer it by statute.

2. The petitioner also contends (Pet. 2) that the imposition of the tax after he became a fully insured individual constituted a deprivation of his property without due process required by the Fifth Amendment of the Constitution. He cites no authority for this position, and there is none. The pattern of Social Security and insurance benefits and taxes, and of exemptions therefrom, was held constitutional in *Helvering* v. *Davis*, 301 U.S. 619.

Under the program of Social Security benefits enacted by Congress, an insured taxpayer has not fully paid for maximum retirement benefits until (1) he is "fully insured," *and* (2) he has continued to pay Social Security taxes until he has reached retirement

age. The fact that he would be entitled to maximum benefits as soon as he achieved the "fully insured" status *if* he were then at retirement age is immaterial. What taxpayer is really insisting upon is a correlation between the amount of taxes he paid in and the benefits he received in return. The Constitution, however, requires no such correlation. As the Supreme Court said in *Nashville, C. & St. L. Ry.* v. *Wallace*, 288 U.S. 249, the Constitutional power to levy taxes does not depend upon the enjoyment by an individual taxpayer of any special benefits resulting from the use of the funds raised by taxation. Nor is Congress constitutionally required, by the Fifth Amendment or otherwise, to treat a "fully insured individual" as having finished paying for his insurance after only ten years of his working life.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

SCOTT P. CRAMPTON,
Assistant Attorney General.

GRANT W. WIPRUD,
JOHN M. SCOTT, JR.,
Attorneys.

JULY 1972.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1972 471066 8